IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH

C.E.A No. 11 of 2007

Date of Decision: 19.11.2007

Commissioner of Central Excise Commissionerate, Delhi-IV, Faridabad.

…Appellant

Versus

M/s Pooja Forge Ltd., Faridabad.

…Respondent

CORAM: HON'BLE MR. JUSTICE M.M. KUMAR

HON'BLE MR. JUSTICE AJAY KUMAR MITTAL

Present: Mr. Sanjeev Kaushik, Advocate,

for the appellant-revenue.

M.M. KUMAR, J.

This appeal filed by the revenue under Section 35G of the Central Excise Act, 1944 (for brevity, 'the Act'), is directed against order dated 17.3.2006, passed by the Customs Excise and Service Tax Appellate Tribunal, New Delhi (for brevity, 'the Tribunal'). It is claimed that the following substantial question of law would arise for determination of this Court:-

> "Whether the Tribunal has erred by relaxing the embargo on removal of capital gods, other than moulds and dies to a job worker for the purpose of production of goods on their behalf and according to their specifications, in violation of Rule 57S of Central Excise Rules, 1944, which had been enacted to regulate the utilization of the

capital goods and the credit allowed in respect of duty paid thereon?

Brief facts of the case as disclosed in the appeal are that the assessee-respondent holds Central Excise registration and were engaged in the manufacture of nuts, bolts, screws and steel clamps. On scrutiny of their return for the month of April, 2001, it was observed that they availed Cenvat credit to the tune of Rs. 14,09,150/-. The aforementioned entry for availing Cenvat credit stood already challenged vide show cause notice issued on 15.3.2001. It has also come on record that the assessee-respondent has second unit. According to the allegation the assessee-respondent have taken Modvat and Cenvat credit in Unit No. 1 without receiving the capital goods and without prescribed procedure laid down by law. The machines were consigned to Unit No. 1 and credit has been taken on record of Unit No. 1. However, contrary facts were revealed on detection by the Anti-evasion Officers even then the assessee-respondent proceeded to avail credit on balance 50% duty next year. The omission has been accepted by Shri Aggarwal, Chairman of the Firm. After thorough scrutiny the Adjudicating Authority vide his order-in-original dated 12.10.2004 (P-1) confirmed demand of Rs. 8,21,281/- under Rule 12 of the Cenvat Credit Rules, 2001 (for brevity, 'the Cenvat Rules') read with Rule 57U of the Central Excise Rules, 1944 (for brevity, 'the Excise Rules') and Sections 11A and 38A of the Act. Further a penalty of equal amount under Rule 13 of the Cenvat Rules read with Rule 57I of the Excise Rules and Section 11AC of the Act has been imposed. It has further been held that the

assessee-respondent is liable to pay interest at the applicable rate under Section 11AB of the Act.

The assessee-respondent preferred an appeal and the Commissioner (Appeals) while confirming the order-in-original passed by the Adjudicating Authority, dismissed the same, vide order-in-appeal dated 10.11.2005 (P-2). Further appeal filed by the assessee-respondent has also been allowed by the Tribunal vide final order-in-appeal dated 27.4.2006, which is subject matter of challenge in the instant appeal.

After hearing learned counsel at some length, we find that no substantial question of law would arise for determination of this Court because these are pure findings of facts. As to whether the assessee-respondent had two units of one entity or there were two different entities is necessarily a question of fact which is further fortified from the fact that only one registration has been made. Had there been two units then the assessee would have been compelled for registration of both independently. We also deem it just and appropriate to notice that another appeal being C.E.A. No. 31 of 2007, between the same parties, claiming similar question of law came up for consideration before us today and the same has also been dismissed by us. Therefore, there is no merit in the appeal and the same is accordingly dismissed.

(M.M. KUMAR)
JUDGE

(AJAY KUMAR MITTAL)
JUDGE

November 19, 2007
Pkapoor